IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2259 of 1999

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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ORIENTAL INSURANCE CO LTD - Appellant(s)
Versus
ICHHABEN BABUBHAI PANCHAL & 7 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant
MR RS PANJWANI for Respondents : 1 – 4 - Absent
RULE SERVED for Respondent: 5
RULE UNSERVED for Respondents : 6 - 8.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE C.K.BUCH

Date : 11/12/2007

ORAL JUDGMENT (Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 arises from the judgment and award dated 11th February, 1999, passed by the Motor Accidents Claims Tribunal, Baroda [hereinafter to be referred to as “the Tribunal”] in Motor Accident Claim Petition No. 1832 of 1991. The appellant Oriental Insurance Company Limited was the insurer of Maruti car no. GBY 130 involved in the accident in question.

On 24th December, 1991, one Babubhai Gulabchand Panchal was travelling in Maruti car no. GBY 130 from Mumbai to Ahmedabad on National Highway No.8. When the car reached near Kandari village, the Maruti car had headon collision with the oncoming truck bearing registration no. GRX 3558. In the said accident, Babubhai Panchal was grievously injured. He was removed to S.S.G. Hospital, Baroda, where he died on 25th December, 1991 on account of the injuries received in the accident. The widow and the three minor children of the deceased Babubhai filed the above referred Claim Petition No. 1832 of 1991 in the Tribunal for compensation in the sum of Rs.

40,00,000/-. According to the claim made by the claimants, the deceased Babubhai was 42 years of age. He was resident of Ahmedabad. On 22nd December, 1991, he had gone to Mumbai by Maruti car no. GBY 130 which belonged to his friend, one Trilokchandsinh Baga - opponent no.5. The said car was insured by the opponent no.6 Oriental Insurance Company. After visiting Mumbai, the deceased Babubhai left for Ahmedabad on 24th December, 1991, the accident occurred when he reached near village Kandari. According to the claimants, the road widening was in process and there was a tanker lying turtle on the road and oil had spilt from the tanker. The road being slippery, Maruti car being was driven in extreme left at a very slow speed. Nevertheless, the offending truck came headon on its wrong side at an excessive speed, hit the car and dragged the car to the extreme right of the road. Thus, it was the driver of the offending truck who was wholly responsible for the accident in question. The deceased Babubhai was a manufacturer and trader in chemical vessels. He owned a manufactory in Ahmedabad city. His annual income was around Rs. 2,40,000/-. He

was paying electricity bills, telephone bills. Had he lived longer, he would have expanded his business and earned around Rs. 30,000/- every month. The claim was contested by the insurer by written statement [exh. 32]. The insurer denied that it was the offending truck which was responsible for the accident in question and not the deceased as suggested by the claimants. The insurer also alleged that it was the deceased Babubhai who was driving the car and the accident occurred on account of his negligence. The insurer thus denied its liability to pay compensation to the claimants.

Before the Tribunal, the claimant no.1, the widow of the deceased gave evidence [exh.43]. She supported the claim made by her. She stated that the deceased Babubhai had business which had sales tax registration and registration under the Shops & Establishments Act. That the deceased Babubhai was paying telephone bills, electricity bills, sales tax etc. That he was paying insurance premia worth Rs. 46,000/-. She, however, admitted that the deceased Babubhai did not pay income tax. In support of the

claim, the claimants produced sales tax registration of the business of the deceased and certain accounts. It may however, be noted that the said accounts were not proved. It may also be noted that the claimants did not produce sales tax returns filed by the deceased or the amount of sales tax paid by him. The claimants produced certificate of registration under the Shops & Establishment Act [exh.53], certificate of registration under the Sales Tax Act [exh. 54] as manufacturer and trader [exh.55], certificate of registration as Small Scale Industry [exh. 56], copies of insurance policies which were not admitted in evidence. The claimants also produced photographs of the damaged car which too were not proved and were not admitted in evidence. The panchnama of the scene of the accident, the FIR registered with the police and the postmortem report are produced at exhs. 46, 44 and 47. The claimants also filed written submissions before the Tribunal. In the written submissions the claimants changed their stand. Now, according to the claimants, it was Maruti car which was driven on the wrong side of the road and the drivers of both the vehicles were responsible for the

accident in question.

The Tribunal, considering the evidence on record and the submissions made by the parties held that;

> **“It is clear that there is a composite negligence on the part of driver of both the vehicles involved in the accident and they are jointly and severally liable and responsible for the said act”.**

As to the amount of compensation, the Tribunal assessed the average monthly income of the deceased at Rs. 15,000/-. From that, the Tribunal has deducted 1/3rd of the amount for the maintenance and expenses of the deceased. Thus, monthly dependency loss is assessed at Rs. 10,000/-. Considering the age of the deceased, a 12 years' multiplier has been adopted. Thus, total compensation for the dependency loss is calculated at Rs.14,40,000/-. To that, the Tribunal has added conventional amount of Rs. 50,000/- for pain, shock and suffering, loss of consortium, loss of expectancy of life and funeral expenses. The

Tribunal has awarded total sum of Rs. 14,90,000/- with interest at the rate of 12% per annum and the proportionate cost.

Feeling aggrieved, the Insurer has preferred the present Appeal. Mr. Mehta has submitted that the offending truck was not insured. The driver and the owner of the truck did not appear before the Tribunal to contest the claim. The owner of the Maruti car also did not appear before the Tribunal to contest the claim. The Insurance Company had, therefore, moved application exh. 42 under Section 170 of the Motor Vehicles Act, 1988 for permission to contest the claim on all issues. The said permission was granted by the Tribunal.

Mr. Mehta has submitted that it was the Maruti car which was found on the wrong side, that is, it was driven on the right side of the road. Further, it was front driver's side of the Maruti car which suffered extensive damage. Thus, one who died in the accident was the driver of the Maruti car. Besides, neither in the pleadings nor in the

evidence, it has been brought on record that who was driving the Maruti car. It was never the claim of the claimants that anybody else had accompanied the deceased. Police Yadi [Ex.45] disclosed that besides the deceased, there was one more person in the car, one lady Hansaben Sarvaiya. The said lady had received minor injuries. The said lady also did not come forth to give evidence. In the circumstances, the only inference that could be drawn was that the deceased Babubhai was driving the Maruti car. In that case, the Insurance Company would not be liable to pay compensation to the claimants.

As to the amount of compensation awarded, Mr. Mehta has submitted that the average monthly income of Rs. 15,000/- of the deceased worked out by the Tribunal is excessive and is not supported by the evidence on record. He has also submitted that the conventional amount of Rs. 50,000/- awarded to the claimants is also excessive. He has submitted that since the deceased did not pay income tax, his income could not be more than the minimum taxable income, that is, Rs. 22,000/- in the relevant year. In the

submission of Mr. Mehta, the annual income of the deceased at the time of his death could not be more than Rs.25,000/-.

The claim was contested by the opponent no.1, driver of the offending truck, by written statement [exh. 17]. The said opponent denied that a tanker was lying turtle on the road, or that the road was slippery from oil spilled from such tanker. It is stated that the Maruti car was driven by the deceased Babubhai; he tried to overtake a truck going in front of him. In the process, he came over to the extreme right of the road and had headon collision with the offending truck. The opponent no.3 Abdul Hamid Pathan, owner of the offending truck contested the claim by written statement [exh.28].

We are of the opinion that taking reasonable view of the evidence on record, the fact that the deceased held insurance policies for which he paid premia and that he was an entrepreneur engaged in manufacturing and trading in chemical vessels, we can fairly assess the annual income of the deceased at

Rs. 60,000/-. Considering the possible future increase, the average annual income can safely be worked out at Rs. 75,000/-. After deducting 1/3rd of the amount for the maintenance and personal expenses of the deceased, the annual loss of income to the family would be Rs. 50,000/-. It is not in dispute that the deceased was 42 years of age, 12 years' multiplier adopted by the Tribunal is appropriate. The total dependency loss, thus, would be Rs. 6,00,000/- to which we propose to add a sum of Rs. 35,000/- as conventional amount. We are, therefore, of the opinion that the claimants are entitled to compensation in the sum of Rs. 6,35,000/- with interest at the rate of 12% per annum and the proportionate cost.

This brings us to the question as to the extent of the responsibility of the driver of the Maruti car. From the panchnama and the written submissions made, it is apparent that it was the Maruti car which was on the wrong side of the road, that is, on the right hand half of the road. Besides, there is no mention of the road widening under

process or a tanker/vehicle lying on the road or of the spilt oil. To us, it appears that the case of a tanker lying turtle and of spilt oil and the road widening was made out by the claimants in their pleadings with a view to throwing responsibility on the offending truck. However, when it was learnt that the offending truck was not insured, improvement was made in the written submissions by stating that both the drivers were responsible for the accident in question. Besides, neither in the pleadings nor in the oral evidence nor in the written submissions any mention has been made as to who was driving the Maruti car. As disclosed in the police Yadi, the only persons in the car were deceased Babubhai and a lady named Hansaben. Neither the owner of the car nor the aforesaid passenger Hansaben gave evidence before the Tribunal. Moreover, in their pleadings, the claimants have stated that the deceased Babubhai had gone to Mumbai in the Maruti car belonging to opponent no.5 Trilokchandsinh Baga. It was never the case of the claimants that any other person had accompanied the deceased Babubhai or anybody else was driving the said Maruti car. We are, therefore, of the opinion

that it was the deceased Babubhai who was driving the Maruti car; he took the car to the extreme right of the road. It was the negligence of the deceased Babubhai alone which resulted into the accident in question. As the deceased himself was the tortfeaser, the claimants are not entitled to receive compensation.

We are at pains to note that though the claimants were tacitly silent in their pleadings and oral evidence about the identity of the driver of Maruti car, the Tribunal has not cared to elicit this vital information from the claimants. Inspite of specific defence raised by the Insurance Company, neither the Tribunal framed appropriate issue nor did it record the finding as to who was the driver of the Maruti car.

In the result, the Appeal is allowed with cost. The impugned judgment and award dated 11th February, 1999 passed by the Motor Accidents Claims Tribunal, Baroda in Motor Accident Claim Petition No. 1832 of 1991 is quashed and set aside. The amount

deposited in the Tribunal and invested in the Bank along with interest earned on such amount be remitted to the appellant Oriental Insurance Company Ltd.

[MS. R.M. DOSHIT, J.]

[C.K. BUCH, J.]

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